

around this country as an arm of the Republican Party. Professor Sheldon Goldman was recently quoted in an article by Stephanie B. Goldberg in *MS. Magazine* as saying: "If courts are perceived as being governed by political ideology, they lose public support and are no longer seen as an independent branch of government. They're just an arm of the regime." Courts should not be an arm of the Democratic Party or the Republican Party. It is one branch of Government that should be independent. This White House seems to want to change that.

Over more than 200 years of history, Presidents occasionally have been unable to resist the temptation of court-packing schemes, such as in the case of John Adams or Franklin Roosevelt. Those were wisely rejected. If the White House is unwilling to have an independent judiciary, I hope the Senate will show enough courage to reject that.

Before observing the absence of a quorum I ask unanimous consent that the time run equally against both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. In my capacity as the Senator from Alabama, I ask unanimous consent that the order for the quorum call be rescinded.

#### RECESS

The PRESIDING OFFICER. Hearing no objection, under the previous order, the hour of 12:30 having arrived, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:30 p.m., recessed until 2:16 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

The PRESIDING OFFICER. The Senator from Virginia.

#### ADDITION OF COSPONSORS—S. CON. RES. 31

Mr. WARNER. Mr. President, I would like to submit to the Chair a unanimous consent request.

Mr. President, pending at the desk is S. Con. Res. 31 relating to the subject of prisoners of war. I commend the Senator from Pennsylvania, Mr. SANTORUM, for his work on this resolution, approaching me and others about the need for this resolution days ago. By inadvertence, and I accept responsibility for that, he was omitted from the list of cosponsors.

At this time, I ask unanimous consent that the Senator from Pennsylvania, Mr. SANTORUM, be added as a cosponsor to S. Con. Res. 31, which is at the desk. I thank the Chair.

Mr. ALLARD. If the Senator from Virginia will yield?

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLARD. I would also like to be listed as a cosponsor on that resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

Would you add the Senator from Ohio?

Mr. WARNER. Mr. President, I ask that the distinguished Presiding Officer, the Senator from Ohio, be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. For the benefit of the Senate, it is being discussed now as to when this resolution might be brought up. It is bipartisan. Senator LIEBERMAN is one of the original cosponsors, together with the distinguished majority leader, Senator FRIST, Senator STEVENS, Senator INOUE, myself, and now the others.

So those Senators having an interest should so notify the Presiding Officer.

I yield the floor.

#### EXECUTIVE SESSION

#### NOMINATION OF TIMOTHY M. TYMKOVICH, OF COLORADO, TO THE UNITED STATES CIRCUIT JUDGE FOR THE TENTH CIRCUIT—Continued

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, the order of business on the floor, if I am not mistaken, is the nomination of Mr. Timothy Tymkovich for lifetime appointment to the United States Court of Appeals for the Tenth Circuit. I rise in opposition to that nomination.

Initially, it is worth noting that the Tenth Circuit is closely divided between Republican and Democratic appointees, and the seat for which Mr. Tymkovich was nominated is a seat that the Republican-controlled Senate has denied on more than one occasion. In fact, they have denied it to a moderate Hispanic-American Clinton nominee in the year 2000, Colorado Attorney General Christine Arguello. She would have been the first and only Hispanic-American judge on the Tenth Circuit, but the Republicans, then in control of the Senate, refused to give Ms. Arguello a hearing or a vote.

The Republican-controlled Senate also refused to give a hearing or vote to another Clinton nominee for the Tenth Circuit, James Lyons, thus ensuring that this vacancy which we debate today would be theirs to fill. That is what led us to this moment in time where this nomination is being considered on the floor of the Senate.

I asked Mr. Tymkovich some questions when he appeared before the Judiciary Committee, and I would like to relate to you some of his answers. One of them relates to his membership in the Federalist Society.

There is nothing illegal about the Federalist Society, nor any reason why

someone would deny their membership, but it has become a strange coincidence how many Bush administration nominees are members of the Federalist Society. I have said that when you chart the DNA of Bush administration judicial nominees, you are likely to find, more often than not, the Federalist Society chromosome.

So I started asking questions, and some of my colleagues are now joining me. Why? What is it about this organization that is becoming such an important element on a resume of someone seeking a judgeship in the Bush administration?

I asked Mr. Tymkovich, who is not only a member of the Federalist Society, but who is on its Colorado board of advisers, the following question:

One of the goals of the Federalist Society is "reordering priorities within the legal system to place a premium on individual liberty, traditional values, and the rule of law."

I went on to ask him:

Which priorities do you believe need to be reordered? What is the role of federal judges and the courts in reordering such priorities? On which traditional values should there be a premium, and why? The Federalist Society also states that its objective "requires restoring the recognition of the importance of these norms among lawyers, judges, and law professors."

I asked Mr. Tymkovich:

If you are confirmed, how will you as a judge restore, recognize, or advance these norms?

I do not believe these were trick questions. I believe they were open-ended questions so Mr. Tymkovich could tell us what it is about the Federalist Society that he understands to be their mission, and whether he agrees or disagrees.

Mr. Tymkovich's entire response is the following:

I am not aware of the context of the quotations in the question, but all seem to address the role of a policy commentator as contrasted with the role of a federal judge. If confirmed as a judge to the Tenth Circuit, I would set aside any personal views and apply the precedent of the Supreme Court and the Tenth Circuit.

The quotations in my question are straight from the "Our Purpose" page of the Federalist Society Web site. They constitute the mission statement of the organization and are central to its identity.

Mr. Tymkovich's assertion that he is not aware of them raises important questions. His responses to this committee during the hearing indicate that he was, at times, evasive in other answers as well.

But there is one particular reason why I oppose Mr. Tymkovich, and it relates to the issue of discrimination.

I have said on the floor of the Senate and in the Judiciary Committee that several weeks ago I had a unique opportunity to visit the State of Alabama for the first time, to go there with Democratic and Republican Members of Congress, on a delegation led by our Congressman from Atlanta, GA, JOHN LEWIS, to visit some of the most important spots in America in the civil rights movement.

We went to Birmingham, AL, and visited the Baptist church where four little girls were killed with a firebomb on a Sunday morning.

I went to Selma, AL, with Congressman JOHN LEWIS, and stood at the spot where he was beaten by the Alabama State troopers and the militia, suffering a concussion, at the time the march to Montgomery was turned back.

We went to Montgomery, AL, and stood on the street corner where Rosa Parks boarded the bus and refused to give up her seat.

The importance of this cannot be overstated for a person in my generation because the civil rights movement was part of my formation as a young person. The civil rights movement was something I valued for what it brought to America. It was a struggle I witnessed as a young student and appreciated as I grew older.

Congressman JOHN LEWIS said to us, as we were visiting these important historic sites, something that was not part of the formal program. He said: There never would have been a civil rights movement in Alabama, there would not have been a march from Selma to Montgomery, were it not for one Federal judge, Frank Johnson.

Frank Johnson, a Federal district court judge—Republican, appointed by President Eisenhower—had the courage to stand up to the establishment in Alabama and other Federal courts and to fight against discrimination. He made important rulings, striking the Montgomery County ordinance which allowed for segregation on buses, striking laws which did not allow fair representation in the legislature of Alabama, and, of course, signing the order which allowed the march from Selma to Montgomery.

Because of his courage, he was shunned by leaders in society. He could not go back to his old country club. He had to start using the public golf courses. But there was worse. His mother's life was threatened. Bombs were going to be detonated at his home and her home. Security was necessary around the clock. But he persevered. And because of his courage and his determination, the civil rights movement was a reality.

America is a better place because of one Federal district court judge who, given a chance to stand up against prejudice and bigotry, did the right thing for America.

I thought to myself, as all of these judicial nominees come to the Senate, through the Judiciary Committee, where is the next Frank Johnson? Where is the next person who will stand up and fight for civil rights, the challenge of our generation?

I thought over that particularly when I considered the candidacy and the nomination of Mr. Tymkovich for this circuit court judgeship. Mr. Tymkovich already has had his chance to speak out on the issue of discrimination. Sadly—sadly—he came out on the

wrong side. Mr. Tymkovich appears to be hostile to laws prohibiting discrimination based on sexual orientation. This isn't an easy issue for a lot of Members of Congress. There are people who feel very strongly against those with a different sexual orientation, gays and lesbians in American society. I, for one, was raised in a conservative small town, East Saint Louis, IL. I raised my family in another small town, Springfield, IL. It was not until I got involved in congressional politics that I stepped back and said: I have to take a look at this issue. I have to decide whether this is a civil rights issue and, if it is, which side of history I will be on.

I have tried, though my record is not perfect, to stand for the proposition that discrimination against any American based on race, religion, national origin, gender, disability, age, or sexual orientation is wrong. I think that is a standard that America—all of America—should hold high. But, unfortunately, when it came to Mr. Tymkovich, and discrimination against people because of sexual orientation, he took an opposite course. He zealously supported Colorado's amendment 2, which eliminated the legal rights for gays, lesbians, and bisexuals by banning all legislative, executive, or judicial action at any level of State or local government designed to protect them. In other words, amendment 2 commanded that there be no recourse for any gay person in Colorado who was fired or not hired, denied housing, harassed in school, or subject to similar acts of discrimination.

When I took a look at the Supreme Court case where this amendment was challenged, they listed some of the local ordinances that were at issue. They listed Colorado municipalities and what they were attempting to protect: Aspen, CO, had a local ordinance prohibiting discrimination in employment, housing, and public accommodation based on sexual orientation; Boulder, CO, and Denver, CO the same thing; an executive order prohibiting employment discrimination for all State employees classified and exempt on the basis of sexual orientation; the Colorado insurance code, forbidding health insurance providers from determining insurability and premiums based on an applicant's or a beneficiary's or an insured's sexual orientation; and other provisions prohibiting discrimination based on sexual orientation at State colleges.

These were the laws which amendment 2 in Colorado would have wiped off the books. Mr. Tymkovich came to the U.S. Supreme Court and argued that these local ordinances should be wiped off the books, or at least that amendment 2 should be allowed to stand.

The amendment was approved by a majority of Colorado voters, so the Supreme Court had to really face the basic issue as to whether amendment 2 was an equal justice issue, and wheth-

er, in fact, the Colorado voters could vote to take away the rights of individuals because of sexual orientation.

The Supreme Court decided by a vote of 6 to 3 that the position argued by Mr. Tymkovich was wrong. Only three of the most conservative Justices on the Supreme Court felt otherwise: Justices Scalia and Thomas, and Chief Justice Rehnquist. They dissented, but six other Supreme Court Justices said the Colorado decision to pass amendment 2 violated the equal protection of the laws in the United States and that Mr. Tymkovich's position arguing in favor of it was wrong by a vote of 6 to 3. The man before us today asking for a lifetime appointment to the Tenth Circuit was found by the U.S. Supreme Court to be mistaken in his position.

That is not the first time that has ever occurred. Lawyers argue cases, and sometimes they have no choice. They need to come before the court representing their clients. Whether it is a State, locality, business or an individual, they come before the court and make the best case, and the court rules. Sometimes they are on their side and sometimes they are opposed. In this case the Supreme Court ruled against Mr. Tymkovich.

What troubles me is what happened after that. After the Supreme Court issued its decision, Mr. Tymkovich decided to author a Law Review article. It is a lengthy article in the 1997 University of Colorado Law Review. It is entitled "A Tale of Three Theories: Reason and Prejudice in the Battle Over Amendment 2."

Mr. Tymkovich and a couple other writers went on to explain why the Supreme Court was just plain wrong. Mr. Tymkovich wrote that the Supreme Court decision in *Romer v. Evans* is "merely another example of ad hoc activist jurisprudence without constitutional mooring. If the test of an independent judiciary lies in its response to difficult political decisions, *Romer* is cause for great uneasiness about the health of self-government."

There is a paragraph in this article which I find particularly offensive. Mr. Tymkovich, in describing the lifestyle of those with different sexual orientations, likens them to people who practice bestiality. Those are not my words. They are the words written by Timothy M. Tymkovich who now seeks a lifetime appointment to the second highest court in the nation.

Mr. Tymkovich decided in this article to establish what he considers to be a moral rationale for discrimination. It is not the first time that has happened. If you will look back in our history, there has scarcely been a time when discrimination was practiced in America that someone didn't rationalize it or moralize it. Whether the objects of that discrimination were Native Americans, African Americans, Asians, Catholics, the Irish, they have used some sort of moral rationale to say that a position of discrimination is actually the moral thing to do.

Mr. Tymkovich took exactly that position when it came to discrimination against people based on sexual orientation.

That position goes way beyond the norm in America. Mr. Tymkovich tries to argue in his article that this is all about States' rights. I understand there is an important balance between Federal power and State power. The Constitution acknowledges that. But, historically, those who want to support discrimination have usually found their refuge in the dark shadows of States' rights. The Federal Government should not step in, they argue, to establish constitutional principles of equal justice under the law. They argue: let the States establish those standards, knowing full well that you won't have a uniform standard across the country. You will not have uniform protection under the law.

The Supreme Court, in the case of *Romer v. Evans*, saw it differently. Thank goodness they did. "One century ago," Justice Kennedy wrote, "the first Justice Harlan admonished this Court that the Constitution neither knows nor tolerates classes among citizens."

They went on to say, during the course of this opinion:

"If a law neither burdens a fundamental right nor targets a suspect class, we will uphold the legislative classification so long as it bears a rational relation to some legitimate end."

They said Mr. Tymkovich's logic and argument in *Romer v. Evans* were a basic denial of equal protection under the law. Now Mr. Tymkovich wants an opportunity to go to the second highest court in the land and argue his point of view for a lifetime. I am sorry. That is a bad choice. It is a bad choice for the Tenth Circuit and a bad choice for America.

Throughout my service in Congress, I have tried to support every effort to end discrimination based on race, gender, ethnic origin, religious belief, age, disability, or sexual orientation. Fair and equal treatment of all Americans is a cornerstone of our society and our political system. Unfortunately, despite the great progress we have made, the struggle for civil rights and equal treatment under the law continues today.

Federal judges, such as Frank Johnson, stood up 40 years ago under risk of personal harm and risk to their families and said: I will stand up for equal protection under the law—when it came to African Americans. I am sorry to say that based on his arguments and his own words, I cannot believe that Mr. Tymkovich could ever rise to that challenge.

If we want to turn our backs and ignore the reality of people who have polished their prejudices to a high sheen with legal niceties, we are ignoring a basic responsibility of the Senate of the United States. If we tolerate intolerance, that is a form of intolerance. The intolerance of Mr. Tymkovich, as evidenced in this *Law Review* article,

from which he has not backed away, is something we should not sustain, should not encourage, and should not approve with our vote. If Mr. Tymkovich has his way, the struggle for civil rights and equal treatment under the law will be even greater and more difficult for future generations. That is why I will vote to oppose his nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I would have to say that Tim Tymkovich's nomination is far from a partisan process. In fact, he has been supported in a bipartisan way. I have a list of people who have supported him. I would like to share some of the comments, letters, and statements made in support of Mr. Tymkovich's nomination.

He is widely respected in Colorado as a fair attorney who works well with others regardless of political philosophy. Just listen to the names of these supporters and you will quickly recognize that there is tremendous and broad support for his nomination from people who have worked with him on a daily basis, his peers; for example, Roy Romer, former Democratic Governor of Colorado, with whom Mr. Tymkovich had to work on a fairly regular basis since he was Solicitor General.

Let's look at what the Governor of the State of Colorado said about Tim Tymkovich:

Mr. Tymkovich served the State of Colorado from 1991 through 1996 during the latter part of my tenure as governor of the State of Colorado. He served with distinction and was a strong advocate in legal matters for Colorado. He also demonstrated a capacity to work closely with Colorado Democrats as well as Republicans as Solicitor General. . . . He was always a straight shooter in giving legal advice to me and my top staff.

We are all involved in politics. Sometimes in the political process there is a disconnect from what politicians may say and what they may do. Timothy Tymkovich is not a politician. He is a dedicated public servant. People like the former Governor of Colorado, the former head of the National Democratic Party, recognize his commitment to doing the right thing.

I cannot believe, if he carried on with some of the arguments that have been made by the opposition, that we would have support from individuals such as the former head of the national Democrat party.

The following are supporters of Tim Tymkovich:

Michael Huttner, partner in Foster, Graham, and Huttner, a law firm in Denver; William H. Erickson, former Chief Justice on the Colorado Supreme Court; John M. Hereford, executive director of Great Outdoors; William H. Hanson, a Colorado attorney; Robert F. Nagel, a resident of Boulder, Colorado, a professor of law at the University of Colorado School of Law; the Rocky Mountain News; the Denver Post; Jean Dubofsky, Colorado Supreme Court Justice. On amendment 2, she took the

opposite point of view in arguing the case between the Supreme Court. Mr. Tymkovich, as solicitor general for the State of Colorado, had an obligation, regardless of his personal feelings, to argue on behalf of the people of Colorado. Jean Dubofsky, arguing on the opposite side before the Supreme Court, argued against the amendment. She has written a letter in support of his confirmation. She was his opposition on arguing on amendment 2, which my colleague from Illinois just mentioned in his remarks; she argued against Mr. Tymkovich in the position of the people of Colorado, as far as amendment 2. She said she had to respect him because he was such an eloquent advocate for the people of Colorado, he was intellectual, he made great intellectual arguments, and he is recognized throughout the legal profession in Colorado as somebody who is objective, straightforward and, above all, respects the law, respects the rule of law.

I want to just note that, again, Jean Dubofsky, an "unabashed liberal," according to the *Denver Post*, supports Tim Tymkovich in the strongest terms. Not only was Dubofsky a justice on the Colorado Supreme Court, but she argued against Tim Tymkovich on amendment No. 2; she was opposing counsel. Tim Tymkovich now has the endorsement of not only her but five other former supreme court justices for Colorado. He is well recognized for his legal efforts in trying to enforce the law.

I think in the committee hearing Tim Tymkovich answered the questions that were put forth, and he answered them in a straightforward manner. Here are a couple of key statements he made in committee I think we need to keep in mind on the floor of the Senate. I quote what he said in committee:

I believe an appellate judge has to set aside his or her personal views and faithfully apply applicable Supreme Court precedent.

In other words, he sets aside his own personal views to enforce and to properly interpret the law. What more can you ask? We have three branches of Government: executive, legislative, and judicial. Our forefathers had in mind the legislative branch where we make the laws. We have the executive branch, which administers the laws passed by the Congress, and we have the judicial branch, which is set up to interpret the law and to apply the law.

In response to other questions before the committee, this is what he said about amendment No. 2, and what he said about the article referred to in my colleague's comments earlier in the debate, where Mr. Tymkovich referred to the article written on amendment No. 2:

The article itself describes the public policy arguments that were presented to the voters during the initiative's political campaign, not my own.

As solicitor general of the State of Colorado, he was invited by the Journal to write the article, and he complied to write that article, stating in a factual way the arguments both pro and con for amendment No. 2 in the State of Colorado.

My colleague from Illinois also talked about the previous nomination, and he implied that somehow or other, with the Christine Arguello nomination by President Clinton, there was a political process. Again, I state in the strongest terms that that simply is not true. Carlos Lucero, a Hispanic from Colorado, is the first to serve as a Hispanic on the Tenth Circuit Court of Appeals. I supported him at the time. Christine Arguello's name came up for district court. I am the one who nominated her to be on the District Court of Colorado. It wasn't a nomination, but I sent a recommendation to the President of the United States. She was never nominated by the President. Then at the last minute, her name was put forward—right at about the time we were ready to adjourn the Senate—for a position on the Tenth Circuit Court of Appeals. Frankly, the Senate didn't have time to act on a last-minute nomination put forward by the President.

Many of us have worked hard to make sure that Hispanics have an opportunity to serve on our courts. I think it is important that we continue to push for that. So let me make it clear. I am the Senator who nominated Christine Arguello. I was working with the White House and the Clinton administration to get Mrs. Arguello nominated in the first place. As we have witnessed many times, the politics of August nominations are often nothing more than political gestures aimed at grabbing headlines but have no chance of completing the confirmation process simply because the nomination came too late in the process.

Again, I emphasize, I nominated Christine Arguello. This is the plain and simple truth and we need to recognize that.

Mr. Tymkovich is further recognized for his work by Joseph Quinn, Colorado Supreme Court Justice; Gregory Scott, Colorado Supreme Court Justice; Luis Rovira, Colorado Supreme Court Justice; the Colorado Department of Public Safety, Suzanne Mencer, and Nancy Lewis of the Colorado Organization of Victims' Assistance; Barbara O'Brien, President of the Colorado Children's Campaign; Rebecca Coppes Conway, a Colorado attorney. They have all listed their names as supporters.

You have already heard statements and letters from Governor Romer, the justices, and the newspapers. Here is what the rest of them had to say about Mr. Tymkovich. Suzanne Mencer and Nancy Lewis of the Colorado Department of Public Safety and the Colorado Organization for Victim's Assistance wrote a letter to Chairman Hatch, and I quote:

We have each known Mr. Tymkovich for a considerable period of time and believe that

his sensitivity to the rights of crime victims, as well as his great legal skills, will serve our citizenry well. As Solicitor General, Mr. Tymkovich was instrumental in the creation of the first appellate victim services unit within the office of the Attorney General. Mr. Tymkovich's legal expertise was also significant in the determination of the proper course of action for passage of the Colorado Constitutional Victim Rights Amendment.

The letter went on to describe his superb legal skills and well-recognized victims expertise, and concluded:

His performance has shown not only an understanding of legal issues surrounding crime victimization but also a very great sensitivity to the attendant human cost.

I can go on and talk about the number of people who respect the expertise and the capabilities of Mr. Tymkovich, but the fact is that he has bipartisan support and the Senate should go ahead and confirm him without any further delay.

I ask unanimous consent that the time until 3:45 be equally divided in the usual form for the consideration of the pending nomination, and that at 3:45 today the Senate proceed to a vote on the confirmation of the nomination with no further intervening action or debate. I understand both leaders have agreed to this request.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLARD. I ask unanimous consent that the time be equally divided during the quorum call between advocates and opponents of the nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLARD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DAYTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CRAPO). Without objection, it is so ordered.

The Senator from Minnesota.

Mr. DAYTON. Mr. President, I rise today to oppose the confirmation of this nominee. I do so because his stated views on important judicial matters are not only wrong but also wrong minded, wrong about the particulars of the decisions which he opposes, wrong minded about the proper role and responsibilities of the judiciary under our Constitution.

The nominee has stated: Our society prohibits, and all human societies have prohibited, certain activities not because they harm others but because they are considered immoral.

In this category, the nominee includes sadomasochism, cock fighting, bestiality, sodomy, and homosexuality. The nominee made those comments in an article he wrote for the University of Colorado Law Review. He was expressing his pique at a decision by the U.S. Supreme Court, with six Judges in the majority, which overturned a Colo-

rado ballot initiative prohibiting any legal protections based upon sexual orientation. As Colorado Solicitor General, he had unsuccessfully defended that initiative before the U.S. Supreme Court. By his own words, in that law review article, the nominee demonstrated why the majority of the U.S. Supreme Court was right in its understanding and application of the U.S. Constitution and the role of the judiciary in our society and the nominee is wrong.

The nominee's personal opinion presumably is that homosexuality is immoral. He is entitled to his own opinions. He is not entitled, however, to make his personal opinions the moral code of American society and then to make judicial decisions based upon them. Our country is based upon a foundation of laws which are, in turn, based upon the U.S. Constitution. It is not a society run on the personal prejudices imposed by those who are in power upon the rest of the citizenry.

The judiciary is the ultimate protector of individuals whom some cultural gestapos would otherwise ostracize, demonize, and criminalize. In the extreme, where countries have their laws made that are enforced by the self-proclaimed guardians of the public more or less, which always quite conveniently match entirely with their own personal beliefs, democracy is always and inevitably sacrificed on the altar of prejudice and intolerance, masquerading as higher ideals. A democracy must be able to permit people's differences, especially in their personal lives. We are not required to like someone else's actions. We are not required to agree with their particular views. But we do have to understand and accept their rights to their personal differences from us and our society's tolerances of those differences as being the essence and the test of a democracy.

Any totalitarian government—communist, fascist, Saddam Husseinist—tolerates the behavior and beliefs which conform to their own personal views, but those whose words, beliefs, or actions are different from theirs are not tolerated and not permitted. They are dehumanized, incarcerated, and even executed because they or their views or their actions are different from those who hold the power.

For those of us in a democracy, this is one of the most difficult principles to really understand, and even more difficult for us to put into practice, but that is why we have the judiciary. That is why these are lifetime appointments to the U.S. Federal courts: so that the men and women the President nominates and we confirm can make unpopular decisions, take positions that would get elected officials probably unelected because they do not follow the laws that are derived from the U.S. Constitution. The more unpopular those rights are, the more crucial it is for the judiciary to uphold them.

Unfortunately, this nominee would rather pander to his ideological pals

and perhaps to popular opinion than respect the greater wisdom of the judiciary and the U.S. Supreme Court which he now wishes to join at a lower level. If he does not respect their wisdom and their courage now, it is extremely unlikely that he will acquire either of those qualities when he dons judicial robes. It is a reason again why the penchant of this administration to nominate to high judgeships people who have never before been a judge, as this nominee has not, assures a lack of understanding of the responsibilities and the role, a shallowness, an ignorance and, if they are confirmed, the likely regular abuses based on those misunderstandings and those biases.

I also disagree with the nominee and his characterization that gay men and lesbian women are seeking special rights when, in fact, anyone who views these matters with any understanding of reality, whether he or she disagrees or agrees with those practices, cannot possibly believe they are not subject to regular and sometimes brutal violations of legal rights, civil rights, and human rights. To twist and distort that need for the protections which the United States court system has, to afford to those who are oppressed and discriminated against and who are the victims of prejudices of those who are not willing to relent, by either greater wisdom in the spirit of our democracy or often the biblical junctions which they purport to represent, if the courts will not stand with those individuals to protect them, then there is no recourse and there is no protection.

With this nominee, sadly, there is an unwillingness to even admit the reality of circumstances, much less to evidence any understanding of his responsibilities as a judge to uphold this Constitution and what it means for all citizens: The right of life, liberty, and the pursuit of happiness.

Remember the admonition: Inasmuch as you have done so to these the least of my brothers, you have done so unto me.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. How much time remains on both sides?

The PRESIDING OFFICER. The Senator from Colorado has 24 minutes, and the minority has 14 minutes 14 seconds.

Mr. ALLARD. Mr. President, I reiterate what five former Colorado Supreme Court justices say about Mr. Tymkovich in their letter of recommendation to Chairman ORRIN HATCH on the Judiciary Committee in the Senate. These are individuals who know Mr. Tymkovich. He practiced before them. He worked with them because he was solicitor general for the State of Colorado.

Based on our professional experiences, we are of the unanimous judgment that he is well qualified and most able to serve as an appellate judge of the United States court of appeals.

Mr. President, we need to recognize that this letter comes from former Col-

orado Supreme Court justices with varied political backgrounds. They all differ on professional experiences. They all had diverse legal careers. They had different racial, gender and ethnic backgrounds. But they came up with a unanimous opinion that Mr. Tymkovich should be confirmed by the entire Senate. That speaks loads. His peers, working with him on a daily basis, understand his capabilities.

Mr. President, we have heard both sides present arguments, discuss the nominee, as well as the mechanics of our constitutional judicial nomination process. Now it is time to finish the job and to move to an up or down vote on his nomination. I believe Mr. Tymkovich to be a very well-qualified attorney, an attorney who will maintain high principles and a strong dedication to the law. He has the overwhelming support of the Colorado legal community. His support comes from professionals and clients with varied political backgrounds and differing professional and real-life experiences. His support comes from people with diverse legal careers and job history, and different race, gender and ethnic backgrounds. He is unanimously supported by five former justices of the Colorado Supreme Court, including Jean Dubofsky, an attorney who served as opposing counsel to one of our Nation's most high profile constitutional cases.

Dubofsky and fellow justices consider Tymkovich to possess the necessary attributes of a Federal judge, and that Colorado and the Nation should no longer be subjected to undue delay on his nomination. I strongly urge my colleagues to support the nomination of Mr. Tim Tymkovich. His confirmation would fill a vacancy on the Tenth Circuit Court of Appeals that has sat vacant for 4 years.

In my opening statement, I concluded by stating that a necessary component of providing justice and protecting liberty and freedom is an efficient and properly equipped court. A court that has the personal and judicial resources that enable it to fulfill its constitutional obligations. Tim Tymkovich is highly qualified, and will serve the judiciary in the best tradition of our Nation's most respected courts.

Before I conclude, before we move to a final vote, I would like to leave you with a final thought, an important statement made by five justices of the Colorado Supreme Court.

"... [W]e speak as one voice, resolute in our belief that the people are entitled to and that Mr. Tymkovich is most deserving of consideration... Mr. Tymkovich's experience, practice, public service, temperament and skills will serve the people of the United States well.

Their unqualified support tells us a great deal about Tymkovich's credentials and his suitability to the Federal bench. This statement deserves our attention and our respect.

I urge my colleagues to support the nominee, and to vote for the confirma-

tion of Tim Tymkovich to the Tenth Circuit of the United States Court of Appeals.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ALLARD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLARD. Mr. President, I ask unanimous consent that the time during the quorum call be divided equally between both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLARD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SUNUNU. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SUNUNU. Mr. President, I ask unanimous consent I be allowed to speak as in morning business, with the time allotted against the time for the nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. SUNUNU pertaining to the submission of the resolution are printed in today's RECORD under "Submitted Resolutions.")

Mr. SUNUNU. Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ALLARD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLARD. Mr. President, I ask unanimous consent that the time during the quorum call be divided equally between both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLARD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. How much time remains on Senator LEAHY's time?

The PRESIDING OFFICER. The Senator has 2½ minutes.

Mr. KENNEDY. Mr. President, I yield myself the 2½ minutes.

I urge my colleagues to vote against the nomination of Timothy Tymkovich

to the Tenth Circuit because I do not believe he has met his burden of showing that he has the qualifications, fairness, and commitment to core constitutional values required of an appellate court judge. The positions that Mr. Tymkovich has taken raise serious questions about his ability to be open-minded in cases involving gay rights and privacy, reproductive choice, and the power of the Federal Government with regard to the States.

As State Solicitor General, Mr. Tymkovich defended Colorado's antigay ballot initiative, Amendment 2, which was struck down by the Supreme Court in *Romer v. Evans* for violating the equal protection clause. The *Romer* decision vindicated the ability of gays and lesbians to employ the political process to secure antidiscrimination protections, in the same manner as other American citizens. Justice Kennedy, the author of the *Romer* decision, perhaps put it best when he said "it is not within our constitutional tradition to enact laws like Amendment 2. . . . Central to both the idea of the rule of law and to our own Constitution's guarantee of equal protection is the principle that government and each of its parts remain open on impartial terms to all who seek its assistance."

As State solicitor, Mr. Tymkovich had a duty to defend Amendment 2, but I am concerned about the content and the tenor of the comments made by Mr. Tymkovich in a law review article he wrote after the Court decided *Romer* in which he harshly criticized the Court's reasoning and its decision. Not simply content to disagree with the *Romer* decision, Mr. Tymkovich berates the *Romer* Court for its "ad hoc, activist jurisprudence" and its "willingness to block a disfavored political result." Mr. Tymkovich defends the antigay ordinance as the exercise of freedom against immoral behavior. Employing language that is a frightening parallel to that used by advocates against Federal laws prohibiting racial discrimination in the 1960s, Mr. Tymkovich suggests that prohibiting discrimination on the basis of sexual orientation is an improper infringement on an individual's liberty interest.

Mr. Tymkovich's statements lead one to question whether he will understand the vital role that the equal protection clause and antidiscrimination legislation plays in protecting minorities against popularly-enacted laws. According to Mr. Tymkovich, "it is always legitimate public policy for voters or legislatures to repeal disfavored laws. No law, including civil rights legislation can be seen as a one-way street. In the end, this important point was lost on the U.S. Supreme Court." The harsh tone of the criticism raises concerns about how Tymkovich will approach the civil rights cases that come before him, and raises questions about his judgment and temperament.

At his hearing and in answers to written questions, Mr. Tymkovich did

state that he would follow *Romer*, and that he would be fair in antidiscrimination cases involving sexual orientation and other matters. But it is difficult to reconcile the assertion she made at his hearing with the strong statements in his article.

As solicitor general, Mr. Tymkovich unsuccessfully defended Colorado's decision to cut off, in violation of Federal law, State Medicaid funding for abortions for poor women who had become pregnant due to rape or incest. Again here, Mr. Tymkovich can argue that he was simply doing his job. However, in testimony before Congress in 1996, Mr. Tymkovich criticized the Medicaid requirements as an unwarranted intrusion into a matter of state concern. In that same testimony, Mr. Tymkovich also criticized the Federal "Motor Voter" law as intrusive because it poses "special burdens" on States; criticized the EPA's decision to prosecute polluters who violated Federal environmental law standards as infringing on state prerogatives, and argued against the doctrine of implied preemption. This testimony, in his capacity as one of the top legal advisors to the State Attorney General, leads me to question whether Tymkovich would have the proper respect for congressional authority to pass laws that impact States.

Finally, Mr. Tymkovich received a partial rating of "not-qualified" from the American Bar Association. While such a rating is not automatically disqualifying, when combined with my other questions about Mr. Tymkovich, it leads me to conclude that I cannot support his nomination.

Our Federal courts and the American people deserve judges of the highest caliber: judges who are fair, open, and impartial, who are highly qualified, who possess unimpeachable integrity, and who are committed to core constitutional values. The nominee has the burden to show the Senate that he or she meets that standard and is worthy of confirmation. Unfortunately, Mr. Tymkovich has failed to do so.

I am concerned about what seems like the right-wing ideological bent of the nominees that the administration continues to send forward. I urge this administration to work with the Senate, both Democrats and Republicans, to nominate moderate judges who are qualified, fair, and have bipartisan support. This can be easily done. But the administration continues to insist on its unilateral right to pack the courts with judges hostile to civil rights and to the enforcement of important Federal laws with profound impacts on the lives of Americans.

The central values of our society—whether our society will continue to be committed to equally, freedom of expression, and the right to privacy—are at issue with each of these nominations. The Constitution does not contemplate a Senate that acts as a rubber stamp. A genuine advice and consent role is essential. If the administration

continues to nominate judges who would weaken the core values of our country and roll back the civil rights laws that have made our country a more inclusive democracy, the Senate should reject them. I urge the Senate to reject his nomination.

Mr. KOHL. Mr. President, I rise today in opposition to the nomination of Timothy Tymkovich to the U.S. Court of Appeals for the Tenth Circuit. Having reviewed his record and his testimony at his confirmation hearing, I am left with only one conclusion—he does not warrant confirmation to an appellate judgeship.

It is not merely the extreme, highly ideological positions he has taken on a variety of important legal questions that compels me to oppose his confirmation. But his record is replete with these positions on issues from environmental protection to a woman's right to choose. He has consistently advocated an extreme reading of "States rights" that would eviscerate the ability of the Federal Government to protect Americans from a variety of dangers. He believes that Federal clean air and water regulations, Federal funding for abortions for victims of rape and incest, and even "motor voter" provisions designed to make it easier for citizens to exercise their fundamental right to vote all unconstitutionally interfere with State sovereignty and autonomy.

But what most disturbs me concerning Mr. Tymkovich—and, in my view, plainly disqualifies him for a Federal appellate judgeship—is the animus he has shown towards one group of Americans. He has argued that it is appropriate for the State to forbid localities from passing laws forbidding discrimination on the basis of sexual orientation. And his advocacy of this position was not limited to representing his client, the State of Colorado, in the courts. After the Supreme Court rejected these arguments, and held such laws were contrary to basic principles of equal protection, he published a law review article defending his position. In this article, he stated that it was permissible for the State to deny protection from discrimination to gays just as it would be permissible for the State to forbid certain immoral activity such as "sodomasochism, cock-fighting, bestiality, suicide, drug use, prostitution and sodomy." Such ugly arguments reflect an intolerance and hostility to equal rights that have no place in our Federal courts.

Anyone who reviews my record on judicial nominations knows that I do not lightly oppose Federal judicial nominees. But this nominee's extreme positions and opposition to equal rights for all Americans—regardless of their sexual orientation—leave me no choice.

Mr. HATCH. Mr. President, I am pleased that the full Senate is considering the nomination of Timothy Tymkovich to the U.S. Court of Appeals for the Tenth Circuit.

Timothy Tymkovich, a graduate of Colorado College and the University of

Colorado School of Law, has worked as a partner in private practice since 1996 with the firm of Hale Hackstaff Tymkovich, representing clients in matters involving State licensing and regulatory issues. He has also acquired some expertise in State and Federal election issues, and he has represented a variety of political parties and candidates. Since 1997 he has represented Great Outdoors Colorado, a highly successful State program which devotes lottery monies to fund wildlife and land conservation efforts and State recreation programs.

Mr. Tymkovich has been a great public servant for the State of Colorado, serving from 1991 to 1996 as the State Solicitor General, where he acted as the chief appellate lawyer for the citizens of Colorado. In that capacity he ably represented the State in State and Federal courts, including the Colorado Supreme Court, the Tenth Circuit Court of Appeals, and the U.S. Supreme Court. He provided legal assistance to the Colorado General Assembly and acted as a liaison to Colorado's congressional delegation. He acted as the Attorney General's delegate to Colorado's judicial selection process. He also worked to reform State criminal, consumer protection and antitrust laws.

When he left the office of Solicitor General, the Denver Post editorialized, "In an age in which lawyers and government workers are often held in low esteem, Tymkovich, a member of both groups, has stood in stark contrast to both stereotypes." The Post added, "Tymkovich has set a high standard of service."

Mr. Tymkovich is well respected by his peers for his professionalism and commitment to the field of law. He is a member of the prestigious American Law Institute, which selects members on the basis of professional achievement and demonstrated interest in the improvement of the law; the International Society of Barristers, an honor society made up of 650 trial attorneys in the United States and elsewhere; the American Bar Foundation, which is the research arm of the American Bar Association; and the Colorado Bar Foundation. He currently serves as Chair of the Colorado State Board of Ethics, which acts to advise the Colorado governor and executive branch on ethics issues.

From 1999 to 2001 he served as counsel to the Columbine Review Commission, which was responsible for reviewing all aspects of the 1999 shootings at Columbine High and making recommendations to the Governor regarding ways to respond to, and even prevent, future assaults of the same type. From 1998 to 2000 he served as Chair to the Colorado Governor's Task Force on Civil Justice Reform, which issued findings on the status of civil justice in Colorado and offered recommendations for improvements.

Mr. Tymkovich's nomination has drawn powerful support from all cor-

ners. He enjoys the unqualified endorsements of Colorado Senators CAMPBELL and ALLARD; a number of former Colorado Supreme Court justices, including Justices Erickson, Dubofsky, Neighbors, Rovira, Quinn, and Scott; Colorado Governor Bill Owens; the Colorado Attorney General, Ken Salazar; and Colorado's major newspapers, the Denver Post and the Rocky Mountain News. Significantly Mr. Tymkovich is also supported by former three-term Colorado Governor Roy Romer, who has served as the national vice chair of the Democratic Leadership Council, national co-chairman of the Clinton-Gore '96 campaign, co-chairman of the Democratic National Platform Committee in 1992, and chair of the Democratic Governors' Association in 1991.

I firmly believe Mr. Tymkovich will make a great member of the Tenth Circuit. I urge all of my colleagues to vote to confirm this highly qualified nominee.

Unfortunately there seems to be confusion about Mr. Tymkovich's record on several fronts.

First, some have confused Mr. Tymkovich's advocacy with his personal views. As an advocate for Colorado, Mr. Tymkovich had a duty to defend the laws of Colorado, including Amendment 2. It is entirely unfair and erroneous to state that Mr. Tymkovich has provided his personal views or opinions on these issues. He has not.

Second, it has been said that Mr. Tymkovich compared Amendment 2 to prohibitions on cockfighting and other activities. He has not. As he pointed out to Senator LEAHY on February 26, he was quoting a Supreme Court opinion for the simple proposition that there is Supreme Court precedent for a moral component as a rational motivation for an electorate. This wasn't Mr. Tymkovich's personal opinion, it was what the Supreme Court has said on this issue. Mr. Tymkovich made this point clear a month ago.

I raise these points because some seem to be attempting to reshape Mr. Tymkovich's record on the floor into a form I do not recognize. This man has a distinguished legal career. He is supported by Democrats and Republicans alike. He has served as a successful litigator and he was an excellent Solicitor General for Colorado. Those who know him support him and know he will be a terrific judge.

#### "SPECIAL" RIGHTS

I would like to respond to the allegation that Mr. Tymkovich views protection for gays and lesbians as providing "special treatment" for them.

First of all, Mr. Tymkovich's use of the term "special treatment" mirrored the terminology used by participants in the political debate over Amendment 2's passage.

Second, as part of his job as Solicitor General, Mr. Tymkovich had to defend the provisions of Amendment 2, which was intended to disallow laws recognizing "minority states," "quota preference," "protected status," or "claim

of discrimination" on the basis of sexual orientation.

Never did Mr. Tymkovich in his brief or his law review article argue that homosexuals should not enjoy the Fourteenth Amendment protections available to all.

In the Colorado brief before the U.S. Supreme Court, Mr. Tymkovich specifically pointed out, sponsors of the Amendment intended to prevent a new preferred status designation. To quote the brief: "Individuals would retain precisely the same rights under State and Federal law that they had prior to the enactment of the special protections" disallowed by Amendment 2, and Through Amendment 2, Colorado has simply defined the package of civil rights available to homosexuals and bisexuals under the Colorado Constitution as no larger than that provided by the Constitution and laws of the United States."

It is important to note that Mr. Tymkovich's testimony before Congress in 1996 represented the views of the Colorado Attorney General. He was not there to provide his own views; he was there as an official representative of the State. In fact, Mr. Tymkovich noted during his February 12 hearing that he agreed with some of the testimony, while he disagreed with other parts.

Thank you, Mr. President. I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mr. ALLARD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLARD. Mr. President, it is my understanding that we have less than a minute remaining.

The PRESIDING OFFICER. The Senator is correct.

Mr. ALLARD. Mr. President, I want to make a brief comment before we vote to remind the Members of the Senate that they have heard evidence today that indicates Tim Tymkovich is fairminded, he respects the rule of law, and he has exhibited intelligence and the proper temperament to serve on the Tenth Circuit Court of Appeals.

I ask that my colleagues join me in voting to confirm Tim Tymkovich as a Federal judge on the Tenth Circuit Court of Appeals. In my view, when confirmed, he will be not just a good judge, he will be a great judge.

I yield back the remainder of my time.

The PRESIDING OFFICER. All time having expired, the question is, Will the Senate advise and consent to the nomination of Timothy M. Tymkovich, of Colorado, to be United States Circuit Judge for the Tenth District?

Mr. ALLARD. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

Mr. REID. I announce that the Senator from Connecticut (Mr. LIEBERMAN) is necessarily absent.

The PRESIDING OFFICER (Mrs. DOLE). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 58, nays 41, as follows:

[Rollcall Vote No. 113 Ex.]

#### YEAS—58

|           |             |             |
|-----------|-------------|-------------|
| Alexander | DeWine      | Miller      |
| Allard    | Dole        | Murkowski   |
| Allen     | Domenici    | Nelson (NE) |
| Bayh      | Ensign      | Nickles     |
| Bennett   | Enzi        | Pryor       |
| Bond      | Fitzgerald  | Roberts     |
| Breaux    | Frist       | Santorum    |
| Brownback | Graham (SC) | Sessions    |
| Bunning   | Grassley    | Shelby      |
| Burns     | Gregg       | Smith       |
| Campbell  | Hagel       | Snowe       |
| Chafee    | Hatch       | Specter     |
| Chambliss | Hutchison   | Stevens     |
| Cochran   | Inhofe      | Sununu      |
| Coleman   | Kyl         | Talent      |
| Collins   | Lincoln     | Thomas      |
| Conrad    | Lott        | Voinovich   |
| Cornyn    | Lugar       | Warner      |
| Craig     | McCain      |             |
| Crapo     | McConnell   |             |

#### NAYS—41

|          |             |             |
|----------|-------------|-------------|
| Akaka    | Durbin      | Lautenberg  |
| Baucus   | Edwards     | Leahy       |
| Biden    | Feingold    | Levin       |
| Bingaman | Feinstein   | Mikulski    |
| Boxer    | Graham (FL) | Murray      |
| Byrd     | Harkin      | Nelson (FL) |
| Cantwell | Hollings    | Reed        |
| Carper   | Inouye      | Reid        |
| Clinton  | Jeffords    | Rockefeller |
| Corzine  | Johnson     | Sarbanes    |
| Daschle  | Kennedy     | Schumer     |
| Dayton   | Kerry       | Stabenow    |
| Dodd     | Kohl        | Wyden       |
| Dorgan   | Landrieu    |             |

#### NOT VOTING—1

Lieberman

The nomination was confirmed.

The PRESIDING OFFICER. The President will be immediately notified of this action.

Mr. ALLARD. Mr. President, I move to reconsider the vote.

Mr. SANTORUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will return to legislative session.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. I ask unanimous consent to speak as in morning business for 12 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### CONSUMER ROCKET MOTOR PROPELLANTS

Mr. ENZI. Madam President, I come to you today on behalf of students and 4-H members and Scouts around the world. Start counting backwards from 10 to zero: 10, 9, 8, 7—and depending on the context, people will instantly be re-

minded of their youth, sitting in front of a dimly lit television, watching a rocket take flight as we began the study of space flight and space travel. We were much younger then and all around me kids from all over the State and all around the country were excited and fascinated by the new age of rocketry and, later, space travel.

When Russia launched its Sputnik, it created a sensation, and their success, spurred on by the climate of the cold war, challenged us in the United States to reach for the skies.

Wyoming isn't called the Pioneer State for nothing, and so my classmates and I were determined we would do everything we could to learn about this new branch of science and involve ourselves in the race for space. It was not too long after that President John F. Kennedy issued a challenge to the Nation to land a man on the Moon and return him safely to Earth.

What seemed to be against all the odds soon became reality when Neil Armstrong walked on the Moon, taking a small step for man and a giant leap for mankind.

Even today, those of us who saw those events firsthand on the television will never forget what a miracle it was. It fired our imaginations as it taught the Nation a powerful lesson: If we can make this impossible dream come true for the Nation, of what more are we capable if we dare to try? Perhaps that lesson is what made our Nation what it is today and why we have continued to defy the odds of what is possible for us as a nation, and even for each of us as individuals.

Then came September 11 and we, as a nation, faced another challenge. The call for increased security that resulted from those cowardly and cruel attacks has had some unforeseen consequences, however.

One of them was brought to my attention when a constituent called to share his concern regarding the future of his favorite hobby, model rocketry. He said some of the restrictions of the Homeland Security Act could make it more difficult, if not impossible, for him and his fellow enthusiasts to purchase fuel for their model rockets.

As I looked into his problem, I was surprised to see that the use of ammonium perchlorate composite propellant, better known as APCP, had caught the eye of the Bureau of Alcohol, Tobacco, and Firearms. Although it had been regulated in the past by its placement on the explosives list, the ATF had considered consumer rocket motors as propellant-activated devices and exempt from any ATF permit requirements.

Then, in 1997, the ATF decided to regulate rocket motors that contained more than 62.5 grams of APCP. Those that contained less than that amount were still exempt, but those that contained more would not be available for interstate purchase and transport without a permit.

Since many rocket enthusiasts travel from State to State to participate in

their events, this provision could have made for a lot of needless redtape. To avoid it, many of those participating in this hobby carried their rocket bodies to the events and purchased the rocket motors from vendors at the local launch. With a little ingenuity and co-operation from local vendors, most rocketeers legally avoided the need to purchase and obtain permits.

Now the provisions of the Homeland Security Act have created a new problem. Under the new law, a permit will be required for all rocket motors containing more than 62.5 grams of APCP, whether or not the motor is used in or out of State. And that begins on May 24 of this year—a problem rapidly approaching. The new law creates a problem where there was none before and imposes a solution that will only create unnecessary hardship for those who are studying about rockets or pursuing a hobby as a model rocket enthusiast.

According to the U.S. Product Safety Commission, a rocket motor with less than 62.5 grams of APCP can be used by minors without adult supervision. That is the U.S. Product Safety Commission: 62.5 grams or less can be used by minors without adult supervision. It could not be very bad. Now a rocket with any more than that requires adult supervision and a permit. Such an arbitrary limit makes no sense when it means a 62-gram rocket can be used by your children out playing in a field with their friends, while another gram of fuel puts it in a category that requires adult supervision, Federal intervention, attention, inspection, and expensive, cumbersome permits.

The permit that is required costs \$100, and it requires the submission of fingerprints, a photograph, and a background check. Although the homeland security bill tried to introduce a limited permit that could be obtained for \$25 and a background check, the newly designed permit is restricted to intrastate use and purchase only and would not have any use for rocketeers who travel to events in other States.

My concern about the impact of these regulations, and the process necessary to obtain permits, and the bureaucracy that would be necessary to do that, and to fulfill the requirements for background checks is that it will certainly slow the participation of our young adults in studying rockets and pursuing their dreams of space travel.

As I learned from my own experience—and I was one of those rocket people back at the time of Sputnik—the study of rockets had a ripple effect throughout my own education. It taught me a lot about math, when we had to calculate the amount of fuel we needed and the rate at which the rocket would travel at speed-calculating heights, figuring trajectories, figuring the amount of Gs that would be on a passenger. It taught us about the study of weather, as we would examine reports about our own launch date and temperature and cloud cover that would affect our ability to observe the